

duties under this Act and all such sums of money as are required to be paid out of such Fund by or under this Act or any regulation made thereunder.

(4) The balance one-third of the money paid into the Fund under subsection (2), of each and every such fee or charge levied or recoverable under this Act or any regulation made thereunder shall be credited to the Consolidated Fund.

(5) The Secretary to the Ministry of the Minister in charge of the subject of Trade shall as soon as possible after the end of each calendar year prepare a report on the administration of the Fund and shall cause to be maintained a full and appropriate account of the Fund in respect of each calendar year.

(6) The Auditor-General shall audit the accounts of the Fund in terms of Article 154 of the Constitution.

(7) The financial year of the Fund shall be the calendar year.

## CHAPTER XXXVIII

### OFFENCES AND PENALTIES

**177.** Any person who makes or causes to be made a false entry in any of the registers kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false shall be guilty of an offence and shall on conviction after trial before a Magistrate be liable to a fine not exceeding rupees five hundred thousand or to imprisonment for a term not exceeding seven years.

Falsification of entries in any register.

**178.** (1) Any person who wilfully infringes any of the rights protected under Part II of this Act shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding rupees five hundred

Infringement of Copyright.

thousand or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction such fine or term of imprisonment or both such fine and imprisonment may be doubled.

(2) Any person knowing or having reason to believe that copies have been made in infringement of the rights protected under Part II of the Act, sells, displays for sale, or has in his possession for sale or rental or for any other purpose of trade any such copies, shall be guilty of an offence and shall be liable on conviction by a Magistrate for a fine not exceeding rupees five hundred thousand or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction, to double the amount of a such fine or term of imprisonment or both.

(3) Any person knowingly or having reasons to believe that he is in possession or has access to a computer program infringing the rights of another person, and wilfully makes use of such program for commercial gain, shall be guilty of an offence and shall be liable on conviction by a Magistrate for a fine not exceeding rupees five hundred thousand or to imprisonment for a period of six months or to both such fine and imprisonment.

(4) The Magistrate may, whether the alleged offender is convicted or not, order that all copies of the work and all implements used for the infringement, or all plates in the possession of the alleged offender, which appear to him to be infringing copies, or plates or implements used for the purpose of making infringing copies, shall be destroyed or delivered up to the owner of the right, or otherwise dealt with in such manner as the Magistrate may think fit.

**179.** Any person who wilfully infringes the rights of any registered owner, assignee or licensee of an Industrial Design shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not

exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction to double the amount of such fine or term of imprisonment or both.

**180.** (1) Any person who, for industrial or commercial purposes, makes a representation —

False representations regarding industrial Designs.

- (a) with respect to an Industrial Design not being a registered Industrial Design to the effect that it is a registered Industrial Design ;
- (b) to the effect that a registered Industrial Design is registered in respect of any product, regarding which registration has not been carried out ;
- (c) to the effect that the registration of an Industrial Design gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence, and shall on conviction after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that an Industrial Design is registered if he uses in connection with the Industrial Design the word “registered”, or any word or words expressing or implying that registration has been obtained for the Industrial Design.

**181.** Any person who wilfully infringes the rights of any registered owner, assignee or licensee of a patent shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case

Infringement of Patents.

of a second or subsequent conviction to double the amount of such fine or term of imprisonment or both.

False representations regarding Patents.

**182.** (1) Any person who, for industrial or commercial purposes, makes a representation –

- (a) with respect to a patent not being a registered patent to the effect that it is a registered Patent ;
- (b) to the effect that a registered Patent is registered in respect of any product or process regarding which registration has not been carried out ; or
- (c) to the effect that the registration of a Patent gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent a Patent as registered if he uses in connection with the Patent the word “registered”, or any word or words expressing or implying that registration has been obtained for the Patent.

Unlawful disclosure of information relating to Patents.

**183.** Any person who being or having been employed in or at the office, communicates any information relating to Patents or matters connected therewith obtained by him during the course of his employment in or at the office to any person not entitled or authorized to receive such information, or discloses such information to the public or makes any other unlawful use of such information shall be guilty of an offence, and shall on conviction after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

**184.** Any person who wilfully infringes the rights of any registered owner, assignee or licensee of a Mark, shall be guilty of an offence and shall on conviction after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment and in the case of a second or subsequent conviction to double the amount of such fine or term of imprisonment or both such fine and imprisonment.

Infringement of Marks.

**185.** (1) Any person who, for industrial or commercial purposes, makes a representation—

False representations regarding marks.

- (a) with respect to a Mark not being a registered Mark to the effect that it is a registered Mark ;
- (b) to the effect that a registered mark is registered in respect of any goods or services regarding which registration has not been carried out ; or
- (c) to the effect that the registration of a mark gives an exclusive right to the use thereof in any circumstances, in which having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence and shall on conviction after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) A person shall be deemed to represent a Mark as registered if he uses in connection with the Mark the word “registered”, or any word or sign expressing or implying that registration has been obtained for the mark.

**186.** (1) Any person who—

Other offences as to marks and trade descriptions.

- (a) forges any Mark ; or
- (b) falsely applies to goods any Mark or Marks so nearly resembling a registered Mark as to be likely to mislead ; or

- (c) makes any die, seal block, machine, or other instrument for the purpose of forging, or to be used for forging, a Mark ; or
- (d) applies any false trade description to goods ; or
- (e) disposes of, or has in his possession, any die, seal block, machine, or other instrument for the purpose of forging a Mark ; or
- (f) causes any of the things referred to in this subsection to be done,

shall, subject to the provisions of this Part, and unless he proves that he acted without intent to defraud, be guilty of an offence.

(2) Any person who sells or exposes for sale, or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged Mark or false trade description is applied, or to which any Mark so nearly resembling a registered Mark so as to be likely to mislead, is falsely applied, as the case may be, shall, unless he proves—

- (a) that having taken all reasonable precautions against committing an offence he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the Mark, or trade description ; and
- (b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or
- (c) that otherwise he had acted innocently,

be guilty of an offence.

(3) Any person who imports any piece-goods ordinarily sold by length or by the piece, manufactured outside Sri Lanka, or who sells or exposes for, or has in his possession for sale or any purpose of trade, any piece-goods ordinarily

sold by length or by piece, whether manufactured within or outside the territory of Sri Lanka, which do not have conspicuously stamped in English numerals on each piece, the length thereof in standard metres, or in standard metres and a fraction of such a metre, according to the real length of the piece, shall be guilty of an offence :

Provided that nothing contained in this subsection shall apply to any piece-goods manufactured within the limits of Sri Lanka by hand labour only.

(4) Any person found guilty of an offence under this section shall on conviction after trial before a Magistrate be liable to a fine not exceeding rupees five hundred thousand or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, and in the case of a second or subsequent conviction such fine or term of imprisonment or both such fine and imprisonment may be doubled.

(5) The Magistrate may, whether the alleged offender is convicted or not, order that every chattel, article, instrument or thing by means of or in relation to which the offence has or might have been committed shall be destroyed or declared forfeit to the State or otherwise dealt with as he may think fit.

**187.** Where an offence under this Act has been committed by a body corporate, every person who at the time of the commission of the offence was a Director-General, Manager, Secretary or other similar officer of that body shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

Offences by  
bodies corporate.

**188.** For the purposes of this Part, the definitions contained in section 101 shall apply, unless the context otherwise requires.

Interpretation.

False name or initials.

**189.** (1) The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods—

- (a) of any such figures, words, marks or arrangement or combination thereof, whether including a registered Mark or not, as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are ;
- (b) of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description.

(2) For the purposes of this Part the expression “false name or initials” means, as applied to any goods, any name or initials of a person which—

- (i) are not a Mark, or part of a Mark ; and
- (ii) are identical with, or are a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having been authorized the use of such name or initials ; and
- (iii) are either those of a fictitious person or of some person not, *bona fide*, carrying on business in connection with such goods.

(3) A trade description which denotes or implies that in any goods to which it is applied which contains more metres or standard metres than contained therein, is a false trade description.



**190.** A person shall be deemed to forge a Mark who either— Forging marks.

- (a) without the assent of the owner of the Mark make that Mark, or a Mark so nearly resembling that mark as to be likely to mislead ; or
- (b) falsifies any genuine Mark, whether by alteration, addition, effacement or otherwise,

and any Mark so made or falsified is in this Part referred to as a forged Mark :

Provided that in any prosecution for forging a Mark the burden of proving the assent of the owner shall lie on the accused.

**191.** Any person who—

False declaration to be an offence.

- (a) Makes a false declaration to the Director-General ;
- (b) Makes a false declaration in respect of geographical indication inclusive of Ceylon Tea and Ceylon Cinnamon,

shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding five hundred thousand rupees.

**192.** (1) Any person shall be deemed to apply a Mark or trade description to goods who—

Applying Marks and descriptions.

- (a) applies it to the goods itself ; or
- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture ; or
- (c) places, encloses, or annexes any goods which are sold or exposed, or had in possession for the purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a mark or trade description has been applied ; or

(d) uses a Mark, or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that Mark, or trade description.

(2) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover capsule, case, frame, or wrapper ; and the expression “label” includes any band or ticket.

(3) A Mark or trade description shall be deemed to be applied whether it is woven, impressed, stamped, branded, or otherwise worked into or annexed, or affixed to the goods, or any covering, label, reel, or other thing.

(4) A person shall be deemed to falsely apply to goods a mark who, without the assent of the owner of a Mark, applies such Mark or any Mark so nearly resembling it as to be likely to mislead, but in any prosecution for falsely applying a Mark to goods the burden of proving the assent of the owner shall lie on the accused.

Exemption certain persons employed in ordinary course of business.

**193.** Where a person is charged with of making any die, stamp block, machine, or other instrument for the purpose of forging or being used for forging, a Mark, or with falsely applying to goods any Mark or any Mark so nearly resembling a mark as to be likely to mislead, or with applying to goods any false trade description or causing any of the things in this section mentioned to be done, and such person proves—

(a) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, stamps blocks, machines, or other instruments for making, or to be used in making, Marks, or as the case may be, to apply Marks or descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in Sri Lanka, and was not interested in the goods by way of profit or commission dependent on the sale of such goods ; and

- (b) that he took reasonable precautions against committing the offence charged with ; and
- (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the Mark or trade description ; and
- (d) that he gave to the prosecutor all the information in his power with respect to the person on whose behalf the Mark or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he gives due notice to the prosecutor regarding his intention to rely on defence specified in this section.

**194.** In any indictment, charge, proceeding, or document in which any mark or forged mark is required to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that Mark or forged Mark to be a Mark or forged Mark.

Mark how described in pleading.

**195.** In any prosecution for and offence under this Part—

Rules as to evidence.

- (a) an accused, and his or her spouse as the case may be, may, if the accused thinks fit, be called as a witness, and if called, shall be sworn and examined and may be cross-examined and re-examined in like manner as any other witness ;
- (b) in the case of imported goods evidence of the port of shipment shall be, *prima facie*, evidence of the place or country in which the goods were made or produced.

**196.** Any person who, being within Sri Lanka, abets the commission out side Sri Lanka of any act which, if committed within Sri Lanka, would under this Part be an offence, shall be deemed to be guilty of that offence, and be liable to be indicted, proceeded against, tried and convicted in any district or place in Sri Lanka in which he may be as if the offence had been committed therein.

Punishment of accessories.

For the purpose of this section “abet” shall have the same meaning as in section 101 of the Penal Code.

Search warrant.

**197.** (1) (a) Upon receipt of information of an offence being committed under this Part, a Magistrate may issue either a summons requiring the person alleged to have committed such offence to appear in court and show cause or where such person fails to appear issue a warrant for the arrest of such person ;

(b) The Magistrate may upon being satisfied by information on oath that there are reasonable grounds to believe that any goods or things by means of, or in relation to, which such alleged offence has been committed are in any house or premises of the person charged on the basis of such information, or in his possession or under his control, in any place, such Magistrate may issue a warrant under his hand ;

(c) It shall be lawful for any police officer, or other person named or referred to in the warrant, to enter such house, premises, or place at any reasonable time of the day, and to search therefore and seize such goods or things ; and any goods or things seized under any such warrant shall be brought before the Magistrate’s Court for the purpose of determining whether such goods are liable to forfeiture under this Part.

(2) (a) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Part, is unknown or cannot be found, any information or complaint may be led for the purpose only of enforcing such forfeiture, and a Magistrate may cause notice to be published requiring reasons to be shown to the contrary at the time and place named in the notice, as to why such goods or things should not be forfeited.

(b) If the owner or any person on his behalf, or other person interested in the goods or things, fails to show sufficient cause to the contrary at the time and place named in the notice, Magistrate may order such goods or things or any of them to be forfeited. Every such order shall be subject to an appeal.

(3) Any goods or things forfeited under this section, or under any other provisions of this Part, may be destroyed or otherwise disposed of, in such manner as the Magistrate who ordered the forfeiture may direct, and the Magistrate out of any proceeds which may be realized by the disposition of such goods (all marks and trade descriptions being first obliterated), may make an award to an innocent party for any loss he may have sustained in dealing with such goods.

**198.** In any prosecution under this Part the Court may order costs to be paid to the accused by the prosecutor or to the prosecutor by the accused, having regard to the information given by, and the conduct of, the accused and prosecutor respectively, and the sum so awarded as costs shall be recoverable as if it were a fine.

Costs of defence and of prosecution.

**199.** Where, at the commencement of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Part with respect to false trade descriptions shall not apply to such trade description when so applied :

Provisions as to false description not to apply in certain cases.

Provided that where such trade description includes the name of a place or country, which is likely to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually

made or produced in that place or country, the provisions of this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

**200.** (1) The Provisions of this Part shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Part, be brought against him.

(2) Nothing in this Part shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence under this Part.

(3) Nothing in this Part shall be construed so as to make any servant of a master resident in Sri Lanka liable to a suit or prosecution due to disclosure of information regarding the servant of a master, when required by or on behalf of the prosecutor who, *bona fide*, acts in compliance with the instructions of such master.

Cognizable and bailable offences.

**201.** All offences under this Part shall be cognizable and bailable, within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979. The provisions of the Code of Criminal Procedure Act shall apply to any offence committed under this Part.

Limitation of prosecution.

**202.** No prosecution for an offence under this Act shall be commenced after the expiration of three years after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first occurs.

**203.** On the sale, or in the contract for the sale, of any goods to which a Mark, or trade description has been applied, the vendor shall be deemed to warrant that the Mark is a genuine Mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Part, unless the contrary is expressed in writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to, and accepted by, the vendee.

Implied warranty on sale of marked goods.

## CHAPTER XXXIX

### REGULATIONS

**204.** (1) The Minister may from time to time make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act and in particular in respect of any matter required under this Act to be prescribed.

Regulations.

(2) Without prejudice to the generality of the powers conferred by subsection (1) the Minister may make regulations in respect of any or all of the following matters :—

- (a) the procedure of registration ;
- (b) the classification of goods and services for the purposes of registration ;
- (c) the fees payable in respect of registration and other matters ;
- (d) the forms to be used for any purpose under the Act ;
- (e) the setting up of organizations to administer rights specified in Part II on behalf of the owners of such rights and the conditions under which such organizations are required to work ;
- (f) the admission, registration, cancellation, removal and any other matter relating to agents specified in Chapter XXXVI of the Act ;
- (g) The manner of the administration of the Patent Co-operation Treaty in Sri Lanka ;